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Supreme Court, U.S.
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No. 04-827

In The

# Supreme Court of the United States

JAMES CRAIG STEWART &
BLANCHE LEEANN STEWART,

*Petitioners,*

v.

LARRY MACK SMITH, ELIZABETH HAWK,
Alabama Department of Human Resources,
MARY HAMILTON, AMANDA STAGGS, & JAMY POSS,

*Respondents.*

**On Petition For A Writ Of Certiorari**
**To The Supreme Court Of Alabama**

## SUPPLEMENTAL BRIEF

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## SUPPLEMENTAL BRIEF FOR PETITIONERS

This Court was clear and unambiguous in *Hope v. Pelzer,* 536 U.S. 730 (2002), in stating when immunity can and cannot be afforded to States, their agents, and agencies. It is stated that the petitioners' allegations must be held as true, plead a cognizable violation to the Constitution, and the respondents should have reasonably have been expected to know that their acts were in violation of a clearly established constitutional or statutory right.

First, the petitioners' allegations, when accepted as true, do plead a cognizable violation of the Constitution. The allegations are that the respondents usurped the parental rights of the petitioners as guaranteed under the Fourteenth Amendment to the Constitution. The guarantee of these parental rights has been clearly established on numerous occasions by this Court, including but not limited to, *Lassiter v. Dept. of Social Services,* 452 U.S. 18 (1981), *Quillon v. Walcott*, 434 U.S. 246 (1978), *Wisconsin v. Yoder,* 406 U.S. 205, 231-233 (1972), *Stanley v. Illinois*; supra, *Meyer v. Nebraska,* 262 U.S. 390, 399-401 (1923), *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944), and *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 639-640 (1974).

The respondents should have reasonably been expected to know that their acts were in direct conflict with the Fourteenth Amendment to the Constitution. These respondents include child welfare caseworkers who deal with parental and children's rights regularly, an attorney, and a probation officer who works under the direct control and supervision of the juvenile court judge. This group should very readily be aware of their actions and the Constitutional provisions. So, yes they could be reasonably

expected to know their acts were in direct violation of the petitioners' Fourteenth Amendment rights.

Finally, the acts of the respondents were intentional and malicious. *Santosky v. Kramer,* 455 U.S. 745 (1982), states "Due process requires that the State support its allegations by at least clear and convincing evidence." Refer to the affidavit of Rodney Slusher reproduced at App. 1 of this brief wherein he states "I can state categorically that I informed the Lauderdale County DHR that Mr. And Mrs. Stewart had made arrangements for their son, Craig, to attend the Millersburg Military Academy and any statement to the contrary is simply not true." This statement, along with the previously submitted cancelled check reproduced at App. 18 of the original brief filed with this Court shows there was no reason whatsoever to have a Guardian Ad Litem appointed, much less clear and convincing evidence to request the Emergency Motion for Order Concerning Retrieval of Child's Clothing & Personal Property (App. 8, 9, 10 of original filing with this Court), and the subsequent Order (App. 6 of the original filing with this Court). With the respondents having been shown to have prior knowledge of the parents' Constitutionally protected rights, they proceeded intentionally and with malice to usurp the rights of the petitioners. With a valid Court Order outstanding and the refusal of the respondents to allow a hearing, the petitioners lost custody of their child without any due process. Had the petitioners attempted to retrieve their son and his belongings, they would have been held in contempt of court and arrested.

Throughout these proceedings from the original trial court to the present, the respondents have made no effort to refute the allegations of the petitioners. The only defense they have ever presented is that they should be

immune from suit. The petitioners have shown with clear and convincing evidence that jurisprudence of this Court states they are not entitled to immunity.

## CONCLUSION

For the foregoing reasons, and for those in the petition, the petition for writ of certiorari should be granted. In granting the writ, the judgment of the Supreme Court of Alabama should be vacated and the case remanded to the trial court for a trial by jury.

Respectfully submitted,

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## AFFIDAVIT

Before me, the undersigned authority, personally appeared Rod Slusher, who, being first duly sworn, doth state as follows:

My name is Rod Slusher and I have been a practicing attorney in Florence, Alabama, since 1974. I have personal knowledge of the facts hereinafter stated in this Affidavit.

Sometime in mid to late Summer, 2001, I was contacted by Mr. and Mrs. Jim Stewart to advise them of their rights with respect to their son, Craig. At the time, Craig was a student at a military school in Virginia. Eventually, I had a telephone conversation with a female employee of the Lauderdale County Department of Human Resources about Craig Stewart. This conversation took place in early August, 2001.

In my telephone conversation with the female DHR employee, whose name I do not recall at the time, I informed said employee that Mr. and Mrs. Stewart had made arrangements for Craig to travel from the Virginia military school to his grandmother's house in Mississippi. I further informed the female DHR employee that the Stewarts had made arrangements for Craig to be enrolled at Millersburg Military Academy in Kentucky and that Craig was to remain at his grandmother's house for two weeks and then he would be taken to Millersburg Military Academy to enroll there as a student for the upcoming school year.

Prior to my telephone conversation with the Lauderdale County DHR representative in early August, 2001, I believe DHR had issued a pickup order for Craig. However, after I informed the DHR representative that Craig

was to remain temporarily with his grandmother before proceeding to Millersburg Military Academy as a student, the lady said she would have Mr. or Mrs. Stewart sign a document to release the pickup order which had been issued relative to Craig. After some discussion, the lady said she would have the document delivered to the Stewart residence. This was done and Mrs. Stewart signed the document releasing the pickup order for Craig.

I now understand the DHR says that it has lost the document signed by Mrs. Stewart relative to the pickup order and is disavowing any knowledge that it was told about the Stewart's arrangements for Craig to live with his grandmother temporarily for two weeks prior to enrolling as a student at Millersburg Military Academy for the 2000/2001 [sic] school year. I can state categorically that I informed the Lauderdale County DHR that Mr. and Mrs. Stewart had made arrangements for their son, Craig, to attend the Millersburg Military Academy and that any statement to the contrary is simply not true.

/s/ Rodney B. Slusher
Rodney B. Slusher

Sworn and subscribed before me this the 19th day of December, 2001

/s/ June McKinney
Notary Public